THE HONOURABLE SRI JUSTICE

B.SUDERSHAN REDDY

AND

THE HONOURABLE SRI JUSTICE

K.C. BHANU

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WRIT PETITION No. 8442 of 1995

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O r d e r: (Per BRSR, J.)

The 5th respondent in L.G.C.No. 12 of 1989 is the petitioner in this writ petition filed under Article 226 of the Constitution of India challenging the order dated 24-6-1994 made in L.G.C.No. 12 of 1989 and 1 of 1992 on the file of the Special Court under the A.P. Land Grabbing (Prohibition) Act at Hyderabad.

In order to consider whether the common judgment of the Special Court suffers from any error apparent on the face of the record requiring our interference, few relevant facts may have to be noticed.

The Revenue Divisional Officer, Visakhapatnam filed L.G.C.No. 12 of 1989 under Sec. 8(1) of the A.P.Land Grabbing (Prohibition) Act (for short 'the Act') for eviction of the respondents therein including the petitioner from the application schedule land admeasuring an extent of Ac.7-15 cents in Sy.Nos. 106/2, 106/3 and 107/3 of Chinnagadili village in the limits of Visakhapatnam Urban Agglomeration.

The case set up by the State is that the land situated in Chinnagadili village was a Zamindari village within the jurisdiction of Vizianagaram Estate. After the enactment of Andhra Pradesh (Andhra Area) Estates (Abolition) and

Conversion into Ryotwari Act, 1948, the said land got vested in the Government from 7-9-1949. The land originally formed part of Sy.No.93 of Chinnagadila village and the total extent of which was 117 acres 85 cents and stood classified as Banjar in the revenue records. The said classification continued even after 7-9-1949 in the revenue records. That after the regular survey and settlement operations was conducted, the same was implemented from 1-7-1959 in the records. The land remained vacant since it is a waste land. The 3rd respondent in L.G.C. who was in occupation of Ac.1-39 cents in Sy.No.106/3 was evicted on 27-2-1980 invoking the provisions of the A.P. Land Encroachment Act, 1905 and the same was handed over to the Municipal Corporation of Visakhapatnam on 1-4-1980 for rehabilitating the encroachers of slum areas. When the Municipal Corporation initiated action for the development of the said area, respondents 1 to 4 in L.G.C. filed W.P.No. 220 of 1981 and obtained exparte interim stay order. The said writ petition was disposed of on 15-4-1981. They have also filed a petition under Sec. 11-A of the Abolition Act before the Settlement Officer in the year 1981 along with petition to condone the delay. That petition was dismissed. They have again filed W.P.No. 5694 of 1981 against the Municipal Corporation and the same was dismissed on 6-4-1983. They were not in possession of the land by the date of filing of both the writ petitions.

It is alleged that the petitioner along with respondents 1 to 4 in the L.G.C. entered into an unlawful agreement with the Motor Vehicle and Lorry Workers Union, Visakhapatnam to sell the application schedule land for a valuable consideration and took some advance. Their claim in respect of Ac.10-00 acres in old Sy.No.93 is not correct. It is also alleged that the suit filed by the petitioner and the respondents 1 to 4 in L.G.C on the file of the learned Principal Sub-Court, Visakhapatnam was numbered as O.S.No. 361 of 1987 where under declaration of their title and recovery of possession of the application schedule land against the alleged purchasers was filed and it was pending. The Revenue Divisional Officer accordingly requested the Special Court to withdraw the said suit for its disposal along with L.G.C filed by him.

Accordingly O.S.No. 361 of 1987 on the file of the Sub-Court, Visakhapatnam

was withdrawn for trial and disposal along with L.G.C. No. 12 of 1989 filed by the Revenue Divisional Officer. That on transfer, O.S.No. 361 of 1987 was re-numbered as L.G.C. No. 1 of 1992.

The Special Court framed the following issues for its consideration.

1. Whether the government is the owner of the suit land?
2. Whether the respondents have grabbed the suit land?
3. Whether the respondents have perfected their title by adverse possession of the suit land?
4. To what relief?

Additional issues framed on 18-1-1990.

1. Whether the Municipal Corporation of Visakhapatnam is a necessary party to this petition?
2. Whether the respondent Nos.6 to 117 are bonafide purchasers for value and whether they can claim any equity in their favour?
3. Whether pending the applications of respondents 6 to 117 for assignment of house pattas, this application is maintainable?

That after an elaborate consideration of the matter, the Special Court found that the application schedule land has not yet vested in the Government as claimed by the Revenue Divisional Officer. The main issue was accordingly answered. Simultaneously the Special Court found that the writ petitioner and respondents 1 to 4 in L.G.C. cannot be said to be the owners of the application schedule land in view of the fact that their petition before the Settlement Officer for grant of Rayotwari patta was dismissed and in view of the fact that their claim for Ryotwari patta over the application schedule land was still pending before the Commissioner of Survey and Settlement. The Court accordingly observed that it would not be appropriate to make any comment or observation

about the claim for granting of Ryotwari patta. Thus both the L.G.Cs. were accordingly disposed of.

In this writ petition Sri P.Sri Raghuram, learned counsel for the petitioner submits that the Special Court having found that the Revenue Divisional Officer did not make out any case of ownership ought to have remitted L.G.C. No. 1 of 1992 (old O.S.No. 361 of 1987) for the purpose of disposal on merits in accordance with law. The submission is that the suit filed by the petitioner and four others is based upon the plea of adverse possession and such plea notwithstanding there being no patta granted under the provisions of the Act may have to be gone into by the Civil Court. That after dismissal of L.G.C. filed by the Revenue Divisional Officer there was no option except to remand the suit filed by the petitioner and four others for the purpose of trial and disposal.

Upon perusal of the Judgment under appeal and the relevant material on record, it is clear that the petitioner and four others filed O.S.No. 361 of 1987 not only against the State but also against various individuals for declaration of their title against respondents 3 to 115 in respect of the application schedule land and as well as for recovery of possession based on the plea of adverse possession. The Special Court rightly did not go into that aspect of the matter but however observed that the petitioner and four others who filed O.S.No. 361 of 1987 cannot be treated as owners for the reason that the proceedings initiated against them under the provisions of the Abolition Act are pending and in the absence of any patta, their ownership cannot be considered.

In our considered opinion, the said observation by the Special Court would in no manner amount to disposal of the suit filed by the petitioner and four others for declaration of their title and recovery of possession. It is entirely a different matter whether the petitioner and four others would be in a position to establish their case based on adverse possession. But the same is required to be gone into and the Civil Court's jurisdiction to go into that question is not effected in any manner whatsoever, particularly in view of the finding by the Special Court that the State did not establish its title to the property.

In such view of the matter, it would be appropriate to set aside the order passed by the Special Court in L.G.C.No. 1 of 1992 and resurrect O.S.No. 361 of 1987 on the file of the learned Principal Sub-Judge, Visakhapatnam for its disposal in accordance with law. The trial court shall dispose of the suit on its own merits uninfluenced by the observations made by us in this writ petition.

The Special Court is accordingly directed to send the records in L.G.C.No.1 of 1992 (old O.S.No. 361 of 1987 on the file of the learned Sub-Judge, Visakhapatnam) to the Principal Sub-Court, Visakhapatnam for its disposal in accordance with law. This order shall have no bearing upon the decision of the Special Court rendered in L.G.C. No. 12 of 1989.

The writ petition is accordingly disposed of. No order as to costs.

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B.Sudershan Reddy, J.

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K.C. Bhanu, J.

29th September, 2004

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